



September 30, 2022

By ECF and Email

Hon. Katherine Polk Failla
Thurgood Marshall
United States Courthouse
40 Foley Square, Room 2103
New York, NY 10007
failla_nysdchambers@nysd.uscourts.gov

Re: *The Capital Markets Company, LLC v. Isaac Halpern*, 1:22-cv-07637-KPF

Dear Judge Failla:

We have conferred with Capco's counsel and, unfortunately, have been unable to reach an agreement on a discovery schedule in connection with Capco's request for a preliminary injunction in this case. Given the current state of affairs, *i.e.*, that Mr. Halpern began his employment at Ernst & Young/Parthenon (EYP) on September 19th, we believe the prompt mediation of any remaining claims before a Magistrate Judge, selected by Your Honor, could end this dispute.

Failing that, as I have informed counsel, I have a particularly crowded schedule in the upcoming weeks that includes a long-ago scheduled JAMS arbitration, which I am preparing for now, to be held during the week of October 10th which might carry over into the following week. My colleague on this matter, Mr. Oppenheim, is currently conducting depositions in anticipation of an arbitration scheduled for November 16–22. Perhaps more importantly, Mr. Halpern has to attend several neurological appointments with his father in Philadelphia during the weeks of October 10th and 17th and will likely be in the process of moving him from his apartment into the memory floor of a nursing home during that time.

Despite these obstacles, we propose the dates set forth below, which result in this matter's conclusion before the December holidays (failing successful mediation). This can hardly be called dilatory in a matter where, as noted, *Mr. Halpern has already started his job*. We believe our proposed schedule is consistent with Your Honor's Order on the TRO and its reasoning and the law cited in opposition to Capco's request for expedited discovery (Dkt. No. 29 at 22–25). We also note that Capco's counsel has informed us that it intends to subpoena Ernst & Young, which will only enlarge and complicate discovery.

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We propose:

- Oct. 4 (Tues): Parties exchange document demands
- Oct. 14 (Fri): Parties exchange un-objected to documents and privilege logs, if any
- Oct. 17 (Mon): Discovery Meet-and-confer
- Oct. 19 (Wed): Submission of letter/joint letter to Your Honor re: discovery status/disputes
- Week of Nov. 7-11: Depositions of Messrs. Ethelston, Levy, Oxenstierna, Pugliese and Halpern (Mr. Pugliese, a former Capco partner/employee living in Chicago, will need to be subpoenaed).
- Dec. 5 (Mon): Capco's Preliminary Injunction Moving Papers Due
- Dec. 9 (Fri): Mr. Halpern's Opposition Papers Due
- Dec. 15, 16 or 17: Preliminary Injunction Hearing and/or argument (if Your Honor is available).

We asked Capco if it intends to rely on expert testimony in support of its application (it has not yet replied). If so, changes to the above proposal would be required.

Respectfully,

/s David Wechsler
David Wechsler